

CBSC STAFF REPORT

2004 Annual Cycle Monograph Item 17

PROPOSING STATE AGENCY:

Office of Statewide Health Planning and Development (OSHPD 05/04)

APPLICATION AFFECTED:

Hospital buildings, skilled nursing and intermediate care facilities, licensed clinics, and correctional treatment centers

SUBJECT:

Part 5, California Plumbing Code (CPC), California Code of Regulations:

- Adopt the most recent edition of the model code in effect at the submittal of the 2004 Annual Cycle, the 2003 Uniform Plumbing Code (UPC), and repeal the 2000 UPC
- Maintain OSHPD amendments for scoping and for plumbing requirements for applications under OSHPD's jurisdiction
- Amend scoping in Chapter 1 for skilled nursing facilities as distinct part units within hospitals and as freestanding buildings
- Modify footnotes for Table 4-2 for requirements for lavatories in patient rooms and ICU rooms
- Prohibit the use of PEX-AL-PEX plastic/aluminum piping for applications under OSHPD's jurisdiction
- Repeal the amendment for air conditioning condensate drain piping, now covered by the model code.

FINDINGS:

CBSC Code Advisory Committee Comments/Recommendations

CBSC's Plumbing, Electrical, Mechanical, and Energy (PEME CAC) recommended approve as amended for Sub-item 17-3 based on Criterion 1, and further study for Sub-item 17-5 based on Criterion 3, which OSHPD declined.

PEME CAC recommended approve as submitted/resubmitted for the balance of the sub-items.

(See pages 3-141 through 3-158 of the May, 2005 Code Change Monograph, Volume III.)

Public Comment & Agency Response to Comments:

1. **Sub-item 17-3:** Commenter #1, Sheila Lee, Committee Chair, CALBO State Code Committee, recommended approve as amended based on Criterion 1. Ms. Lee recommended that the state agencies repeal their adoption of Table 4-1 for minimum number of fixtures in the UPC and adopt instead the table in CBC Appendix Chapter 29A. The reason is that Table 4-1 is based on total occupant load for a building, which assumes a maximum number of occupants, and can lead to an excessive number of required fixtures. (See pages 95 & 113 of the October, 2005 Public Comment Monograph.)

Response by Agency: OSHPD proposes to make no change to their proposed adoption of specific sections of Chapter 4 of the 2003 UPC and maintenance of their amendment to Table 4-1. The model code provisions of Table 4-A do not apply to applications under OSHPD's jurisdiction, and the agency finds the comment irrelevant to their rulemaking. (See page 4 of the Final Statement of Reasons, which follows this report.)

2. **Sub-item 17-5:** Commenter #1, Robert Friedlander, representing Construction Code Consultants, recommended approve as amend based on Criterion 3. He objected to OSHPD's prohibition of PEX and PEX-AL-PEX plastic piping in applications under their jurisdiction for the following reasons:
 - OSHPD does not maintain water temperatures for dishwashing and laundry at above 180° F, which is safe for PEX.
 - A study demonstrating the safety of PEX by chemical scientist Dr. Michael Hoffman successfully refutes testimony from Thomas Reid Associates, the latter which was cited in the lawsuit Plastic Pipe and Fittings Association (PPFA) vs. CBSC.
 - The decision in PPFA vs. CBSC regarding CEQA review can be interpreted to include all building regulations, and he asks that CEQA review be initiated for all codes and products. (See pages 105 through 111 and 113 & 114 of the October, 2005 Public Comment Monograph.)

Response by Agency: OSHPD proposes to make no change to their regulations to accommodate Mr. Friedlander's comments for the following reasons:

- Water temperatures maintained at 120° F for patient fixtures and at 180° F for dishwashing must be produced and piped at much higher temperatures, for which, according to the PEX installation handbook, PEX should not be used.
- Further study is recommended to determine the merits of the studies of the experts cited. OSHPD notes that the manufacturer's installation guidelines limit PEX from common practices in OSHPD's facilities, such as contact with extremely hot water and fire-wall penetration sealants. Given the vulnerable population served by OSHPD, a conservative approach to approval of new materials like PEX-AL-PEX must be taken.
- Requesting a CEQA review for all building products is beyond the scope of this rulemaking. (See pages 3 & 4 of the Final Statement of Reasons, which follows this report.)

Staff Findings

OSHPD's submittal appears to be compliant with the Administrative Procedure Act and Building Standards Law, although their repetition of previously-submitted information in the Updated Informative Digest and Final Statement of Reasons is confusing. In their updates, the agency could have stated that there was no change.

Additionally, staff notes that most of Mr. Friedlander's comments concern PEX, for which OSHPD does not propose any regulations in this cycle, and which can be considered irrelevant to their rulemaking.

COMMISSION ACTION:

CBSC staff recommends that the Commission disapprove the submittal of Item 17 to avoid violation of Health and Safety Code §18930, Criterion 1, conflict between codes. While OSHPD completed their rulemaking and mitigated the public comments directed at their regulations, other agencies received a volume of public comment that prohibited a timely response. One agency has withdrawn its proposal for adoption of the 2003 UPC, and two others have been unable to complete their rulemaking within the time frame established by California rulemaking law.

- ❖ **Approve**
- ❖ **Disapprove**
- ❖ **Approve as Amend**
- ❖ **Further Study**